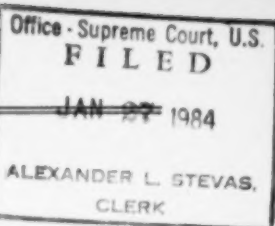


83-1256



No. \_\_\_\_\_

*In The*  
**Supreme Court of the United States**

OCTOBER TERM: 1983

\_\_\_\_\_  
G. Harold KING, Jr. Appellant

Petitioner

v.

CHARLES N. MALONE, Trustee

Appellee  
Defendant

\_\_\_\_\_  
APPENDIX OF  
G. HAROLD KING, JR.  
(separately presented under Rule 21(k))

\_\_\_\_\_  
Respectfully submitted  
BY ATTORNEY  
FRANZ JOSEPH BADDOCK  
P.O. Box 3573  
Baton Rouge, Louisiana  
70821  
(Tel.: (504) 343-9194)

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**INDEX TO THIS APPENDIX SEPARATELY  
PRESENTED UNDER RULE 2i (k)**

List of Documents	Page
1. UNPUBLISHED DECISION ON REHEARING 5th Cir. - November 4, 1983 .....	2
2. ORIGINAL OPINION 5th Cir. October 6, 1983 APPARENTLY UNPUBLISHED .....	4
3. MINUTE ENTRY - May 11, 1983 UNITED STATES DISTRICT COURT .....	7
4. NOTICE OF JUDGMENT - March 30, 1983 UNITED STATES DISTRICT COURT .....	9
5. JUDGMENT - March 30, 1983 UNITED STATES DISTRICT COURT.....	10
6. REASONS FOR JUDGMENT - March 29, 1983 UNITED STATES DISTRICT COURT .....	11
7. SUPPLEMENTAL ORDER - May 21, 1982 UNITED STATES BANKRUPTCY COURT ...	13
8. ORDER - May 14, 1982 UNITED STATES BANKRUPTCY COURT ...	14
9. APPLICATION FOR PRIVATE SALE OF IMMOVABLE PROPERTY.....	20
10. EXTRACT - Caption Sheet on Hearing, May 13, 1982 UNITED STATES BANKRUPTCY COURT showing filing in United States District Court on June 23, 1983 .....	23
11. CERTIFICATE OF SERVICE ON APPENDIX	24

**IN THE UNITED STATES COURT OF APPEAL  
FOR THE FIFTH CIRCUIT**

---

**No. 83-3344  
Summary Calendar**

---

**DO NOT  
PUBLISH**

**In Re: G. HAROLD KING, JR. and  
SHIRLEY G. KING**

**G. HAROLD KING, JR. AND  
SHIRLEY G. KING**

**Bankrupts**

**Plaintiffs  
Appellants**

**v.**

**FIDELITY NATIONAL BANK and  
CHARLES N. MALONE, Trustee,**

**Defendants  
Appellees.**

---

**Appeal from the United States Court for the  
Middle District of Louisiana**

---

**(November 4, 1983)**

**On Petition For Rehearing**

**Before BROWN, TATE and HIGGINBOTHAM, Circuit  
Judges.**

**PER CURIAM:**

In the petition for rehearing filed by the plaintiffs G. Harold King and Shirley G. King, the latter asserts that this court erred in ruling that, in the involuntary bankruptcy proceeding against G. Harold King, the trustee is the proper

party to attack the sale of a 15.75 acre tract of property owned by the plaintiffs. Shirley G. Kings argues that it is error to rule that the trustee is the proper party to assert her rights in the property, because by an earlier ruling of this court she was ordered dismissed from the joint involuntary bankruptcy petition instituted against her and G. Harold King, *see* King v. Fidelity Nat'l Bank of Baton Rouge, 712 F. 2d 188, 191 (5th Cir. 1983), and therefore, the trustee is no longer the proper party to assert an interest in the property on her behalf.

Nothing in our original opinion, however, was intended to prevent Shirley G. King from asserting whatever rights she may have to the proceeds of the sale of the property. In ordering the sale of the property owned by the plaintiffs, the bankruptcy court provided that "any rights whether they have been asserted at this time or not in, to or in any way affecting the 15.75 acre tract are hereby reserved and transferred to the proceeds of this sale and any interest earned thereon." Thus, if indeed Shirley G. King had an assertable interest in the property and she is not otherwise precluded from asserting her interest, the bankruptcy court's order clearly provides that she can assert her interest in the proceeds of the sale.

With the exception of the above clarification of our earlier ruling, in all other respects the petition for rehearing is denied.

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

---

**No. 83-3344  
Summary Calendar**

---

**In Re: G.HAROLD KING, JR. and  
SHIRLEY G. KING,**

**Bankrupts.**

**G. HAROLD KING, JR. and  
SHIRLEY G. KING,**

**Plaintiffs  
Appellants,**

**v.**

**FIDELITY NATIONAL BANK and  
CHARLES N. MALONE, Trustee,**

**Defendants  
Appellees.**

---

**Appeal from the United States District Court for the  
Middle District of Louisiana**

---

**(OCTOBER 6, 1983)**

---

**Before BROWN, TATE and HIGGINBOTHAM, Circuit  
Judges.**

**TATE, Circuit Judges:**

**This appeal is one of several arising out of proceedings  
initiated by the filing of an involuntary bankruptcy petition**

against G. Harold King.<sup>1</sup> On this appeal, several contentions are raised with regard to the validity of certain terms and conditions of the bankruptcy court's order that a tract of real estate owned by G. Harold King and Shirley G. King be sold. No attempt is made by G. Harold King to avoid the actual sale of the real estate. Finding the contentions to be without merit, we affirm.

Following the order adjudicating G. Harold King bankrupt, the trustee filed a notice of proposed sale of the property in question. The appellant King filed objections to the sale. The bankruptcy court overruled King's objections, and issued an order authorizing the sale of the property. The bankruptcy court's order was affirmed on appeal to the district court.

King's first contention is that the bankruptcy court abused its discretion in failing to reserve his right to attack the transaction by which he and Shirley G. King acquired the property in question from King Lumber Industries, Inc. The proper party to attack that sale, however, is the trustee, the designated representative of the estate in a bankruptcy proceeding. 11 U.S.C. § 323 (a). The bankruptcy court's order did effectively reserve the trustee's rights in the property, transferring those rights from the property to the proceeds of the sale. Accordingly, we find that this contention is without merit.

King also argues that the bankruptcy court abused its discretion in awarding a six percent commission to the listing realtors of the property. King contends that the trustee could have sold the property without the assistance of a real estate broker, thereby saving the estate the expense

<sup>1</sup>The proceedings were commenced by the filing of a *joint* involuntary bankruptcy petition against G. Harold King and Shirley G. King. The petition against Shirley G. King, however, was dismissed during the pendency of this appeal. *King v. Fidelity Nat'l Bank of Baton Rouge*, \_\_\_\_ F.2d \_\_\_\_, \_\_\_\_, sl. op. 6581 (5th Cir. 1983). Consequently, only G. Harold King is before this court for purposes of this appeal.

of the realtor's commission. At the hearing on King's objection to the sale, however, the trustee stated that he had tried for months without success to sell the property. Moreover, the estate was incurring great expense in maintaining the property. The use of a realtor to facilitate sale of the property, therefore, was in the best interest of the estate.

King further argues that the bankruptcy court abused its discretion in awarding the realtor's commission because one of the realtors to receive a portion of the commission was the actual purchaser of the property. The realtor-purchaser, therefore, was to receive, in effect, a refund on the purchase price from the proceeds of the sale. Nevertheless, since the use of a realtor was necessary, the estate was going to pay the commission regardless of to whom the property was sold. Further, the purchase price approached what King contended was the actual value of the property. Under the circumstances, therefore, we do not find that the bankruptcy court abused its discretion in ordering payment of the realtor's commission.

King's last contention is that the bankruptcy court abused its discretion in reserving to Citizens Savings & Loan Association the right to claim attorney's fees out of the proceeds of the sale of the real estate. No award of attorney's fees was made by the bankruptcy court. King's contention, therefore, is premature and we decline to rule at this time on the propriety of an award of attorney's fees to Citizens Savings & Loan Association.

#### **Conclusion**

We affirm, finding as did the previous courts that King's contentions are without merit.

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA**

**MINUTE ENTRY:**

**MAY 11, 1983**

**PARKER, C.J.**

**IN RE**

**Appeal of Bankruptcy  
No. 81-329**

**G. HAROLD KING, JR., AND  
SHIRLEY G. KING**

**CIVIL ACTION  
No. 82-537-A**

This matter is before the court on a motion filed on behalf of the debtors for amendment of reconsideration of the court's judgment of March 30, 1983, affirming the judgment of the bankruptcy court. The bankruptcy order appealed from authorized the trustee to sell certain immovable property owned by the bankrupt estate. The bankrupts objected and the bankruptcy court overruled the objections. The issue presented on this motion for reconsideration relates to the fact that the bankruptcy court recognized the security interest of Citizen's Savings and Loan Association which held a first mortgage on the property authorized to be sold, authorized payment to Citizen's Savings and Loan Association and also relegated "any and all rights of Citizen's Savings and Loan Association to attorney's fees herein to the proceeds of the sale" of the immovable property. Appellants are apparently complaining that the Honorable Harvey H. Posner, retired bankruptcy judge, who is presently an unpaid retired annuitant in the process of completing a few bankruptcy matters which he had not completed at the time of his retirement, is a member of the law firm who represents Citizen's Savings and Loan Association. Appellants imply that the attorney's fees referred to "could ultimately be destined for a law firm with an Active Partner still handling



matters as a judicial officer for the bankruptcy court."

The record of this matter will disclose that Judge Posner has had absolutely nothing to do with it and that it has been handled completely and entirely by the Honorable A. Leon Hebert, the present bankruptcy judge. Moreover, no attorney's fees have been awarded; all the bankruptcy judge has done is to relegate the claim of Citizen's Savings and Loan Association for attorney's fees, if any be made, to the proceeds of the sales of the property. This issue, if indeed it is an issue, is premature and not ripe for an appeal.

Accordingly, the motion for amendment or reconsideration is hereby DENIED.

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA  
OFFICE OF THE CLERK**

March 30, 1983

**NOTICE OF JUDGMENT**

**G. HAROLD KING, JR., ET AL**

**CIVIL ACTION**

**VERSUS**

**NO. 82-537**

**FIDELITY NATIONAL BANK, ET AL**

TAKE NOTICE that pursuant to Rule 77(d) of the Federal Rules of Civil Procedure, you are hereby notified of entry of judgment in the captioned matter as of this date.

**C. LEE DUPUIS, CLERK**

/s/ Mari J. Crouch

**DEPUTY CLERK**

**TO: Franz J. Baddock  
David S. Rubin**

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA**

IN RE

CIVIL ACTION

HAROLD KING, JR. and  
SHIRLEY G. KING

NO. 82-537-A

**JUDGMENT**

For the written reasons assigned and filed herein:  
IT IS ORDERED ADJUDGED AND DECREED  
that the Orders of the Bankruptcy court, dated May 14,  
1982 and May 21, 1982 are hereby AFFIRMED.  
Baton Rouge, Louisiana, March 30, 1983.

/s/ JOHN V. PARKER

CHIEF JUDGE  
MIDDLE DISTRICT OF  
LOUISIANA

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

IN RE

CIVIL ACTION

HAROLD KING, JR. and  
SHIRLEY G. KING

NO. 82-537-A

This case was initially filed under § 303 of the Bankruptcy Code. An order for relief under Chapter 7 of the Code was entered on November 12, 1981. On April 16, 1982, the trustee, Charles Malone, applied for an order of the Bankruptcy court approving the sale of certain immovable property belonging to the estate. The notice of sale, dated April 21, 1982, stated that the purchaser agreed to pay the sum of \$356,383.00, from which a realtor's fee of 6% was to be deducted. The notice also recognized the security interest of Citizens's Savings and Loan, which held a first mortgage on the property. The debtors filed written objections to the proposed sale. A hearing on those objections was held on May 13, 1982. The court, after testimony and argument by counsel, overruled the objections to the sale and authorized the trustee to sell the property. The terms and conditions of the sale are contained in the order of the Bankruptcy court dated May 14, 1982, and in the supplemental order of that court dated May 21, 1982. Both orders also make provisions for the disposition of the proceeds. The debtors now appeal because neither order made reference to then pending appeals by the debtors.

A Bankruptcy court may impose any conditions on the sale of estate property which are appropriate under the circumstances and the decision of the court will be given great deference due to the administrative element involved in such matters, see *Collier, Bankruptcy*, (14th Ed. 1976) §

70.98. The decision of the Bankruptcy court will not be set aside in the absence of abuse of discretion, *In Re Ken Boatman, Inc.*, 359 F.Supp. 1062 (D.C.La. 1973) aff'd 504 F.2d 924, *Collier, supra*, § 70.98. Careful analysis of the record and the law reveals that the Bankruptcy Judge has not abused his discretion.

Accordingly, the Orders of the Bankruptcy court, dated May 14, 1982 and May 21, 1982 are hereby AFFIRMED.

Baton Rouge, Louisiana, March 29, 1983.

/s/ John V. Parker

CHIEF JUDGE  
MIDDLE DISTRICT OF  
LOUISIANA

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF LOUISIANA**

IN RE:

CASE NUMBER 81-00329

G. HAROLD KING, JR. AND  
SHIRLEY G. KING  
DEBTORS

**SUPPLEMENTAL ORDER**

IT APPEARING that on May 14, 1982, this Court signed an order in the above captioned matter, a copy of which is attached hereto and made a part hereof; and

IT FURTHER APPEARING that said order, ordered the closing notary to pay to Citizens Savings & Loan Association, all principal, interest and late charges as stated in its proof of claim filed herein in the amount of \$125,866.72 through April of 1982 plus any accrued interest and late charges through the date of sale, reserving to Citizens Savings & Loan Association any right it has to attorneys fees on its claim pursuant to its note and mortgage; but said order failed to order that any right that Citizens Savings & Loan Association has to attorneys fees be relegated to the proceeds of the sale of the 15.75 acre tract;

THEREFORE, IT IS ORDERED that this Court's order of May 14, 1982 be supplemented only insofar as to relegate any and all rights of Citizens Savings & Loan Association to attorneys fees herein to the proceeds of the sale of the 15.75 acre tract.

Baton Rouge, Louisiana, this 21st day of May, 1982.

/s/ A. LEON HEBERT,

BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF LOUISIANA**

IN RE:

G. HAROLD KING, JR. AND  
SHIRLEY G. KING,  
DEBTORS

CASE  
NUMBER 81-00329

**ORDER**

IT APPEARING that Charles N. Malone is the duly appointed and qualified trustee of the above referenced bankrupt estate; and

IT FURTHER APPEARING that part of the above referenced bankrupt estate is the following described immovable property: One (1) certain tract or parcel of ground, together with all the buildings and improvements thereon, situated in the Parish of Livingston, State of Louisiana, in SECTIONS TWENTY (20), TWENTY-ONE (21) and THIRTY-NINE (39), TOWNSHIP 7 SOUTH, RANGE 3 EAST, and designated on a map made by Dorian P. Heroman, P.E., dated October 14, 1974, a copy of which is annexed to an act of record in Book 194, folio 327 of the Conveyance Records of the Parish of Livingston, State of Louisiana, and containing approximately 15.75 acres, referred to herein as the "15.75 acre tract";

IT FURTHER APPEARING that Citizens Saving & Loan Association has a "first mortgage" affecting said property, which mortgage has an unpaid balance of both principal, interest, and late charges, through April of 1982 in the amount of \$125,866.72;

IT FURTHER APPEARING that the Fidelity National Bank of Baton Rouge claims to own a collateral mortgage dated March 6, 1980 securing a \$450,000.00 collateral mortgage note made by King Lumber Industries, Inc. and secures a debt in the amount of \$322,526.14, more

or less, plus interest, late charges and attorneys fees and which collateral mortgage the Fidelity National Bank of Baton Rouge alleges affects the aforementioned property;

IT FURTHER APPEARING that Charles N. Malone, trustee of the above captioned estate and Erwin A. LaRose trustee for King Lumber Industries, Inc., Case No. 81-00072 on the docket of this Court, allege that the aforementioned collateral mortgage in favor of Fidelity National Bank is void, is voidable, that the claim of Fidelity National Bank should be subordinated to other creditors and other positions, some but not all of which have been alleged in an adversary proceeding entitled Fidelity National Bank of Baton Rouge vs. Charles N. Malone, Trustee, Erwin A. LaRose, Trustee, Intervenor, being Adv. No. 81-0182 on the docket of this Court;

IT FURTHER APPEARING that Charles N. Malone, the trustee, filed an application for authority to sell the 15.75 acre tract, at private sale, without warranty of title on the part of the trustee, but with full substitution and subrogation to all rights and actions of warranty against all preceding owners and vendors, for the sum of \$356,383.00 to Thomas L. Sullivan, Jr., or to any other person who may offer a substantially higher price therefor under the terms and conditions of a purchase agreement which was attached to and made a part of the said trustee's application to sell; and

IT FURTHER APPEARING that, after due notice had been sent by mail to all parties in interest that, unless written objection was received in the office of the Clerk of the United States Bankruptcy Court by no later than May 3, 1982, the Court proposed to grant the application filed by said trustee;

IT FURTHER APPEARING that the debtors, G. Harold King, Jr. and Shirley G. King, through their counsel and Erwin A. LaRose, trustee of King Lumber Industries, Inc., through his counsel filed objections to the proposed sale;



IT FURTHER APPEARING that, a hearing was held on May 13, 1982 at 10:00 a.m. after notice had been given to all objecting parties on said objections filed by Erwin A. LaRose, trustee of King Lumber Industries, Inc. and G. Harold King, Jr. and Shirley G. King, debtors herein; present before the Court were Charles N. Malone, attorney at law on behalf of the bankrupt estate of G. Harold King, Jr. and Shirley G. King, debtors; Micheal T. Perry attorney at law on behalf of Erwin A. LaRose, trustee of the bankrupt estate of King Lumber Industries, Inc., David S. Rubin on behalf of Fidelity National Bank of Baton Rouge and Franz Joseph Baddock on behalf of G. Harold King, Jr. and Shirley G. King, debtors herein; after due consideration of the objections, the evidence presented, and arguments of counsel,

IT IS ORDERED that the objection of Erwin A. LaRose, trustee of the estate of King Lumber Industries, Inc. and the objection of G. Harold King, Jr. and Shirley G. King, debtors be, and they are hereby overruled;

IT IS FURTHER ORDERED that Charles N. Malone, trustee herein be, and he is hereby authorized to sell at private sale, without warranty of title on the part of the trustee, but full substitution and subrogation to all rights and actions of warranty against all preceding owners and vendors to Thomas L. Sullivan, Jr. for the sum of \$356,383.00, cash to be paid at the act of sale, all of the trustee's right, title and interest in and to the 15.75 acre tract;

IT IS FURTHER ORDERED that the closing notary shall pay to Citizens Savings & Loan Association, all principal, interest and late charges as stated in its proof of claim filed herein in the amount of \$125,866.72 through April of 1982 plus any accrued interest and late charges through the date of sale reserving to Citizens Savings & Loan Association any right it has to attorneys fees on its claim pursuant to its note and mortgage; but no attorneys fees are to be paid by the notary at the act of sale;

IT IS FURTHER ORDERED that Charles N. Malone, trustee herein shall pay no attorneys fees to Citizens Savings & Loan Association without an order of this Court and notice to G. Harold King, Shirley G. King, Fidelity National Bank of Baton Rouge and Erwin A. LaRose, trustee of the estate of King Lumber Industries, Inc.;

IT IS FURTHER ORDERED that the closing notary shall pay to J. Crowe & Associates, Inc., the listing realtors, a real estate commission in the amount of 6% of the \$356,383.00 sales price;

IT IS FURTHER ORDERED that the closing notary may deduct from the estate's portion of the purchase price and pay all ad valorem taxes for 1981 and prior affecting the 15.75 acre tract, if any; the buyer is responsible for all ad valorem taxes due for the year of 1982;

IT IS FURTHER ORDERED that the purchaser is responsible for all closing costs of the sale except those specifically referred to herein to the contrary

IT IS FURTHER ORDERED that the trustee herein is authorized to pay from the proceeds of the sale the following: to Fidelity National Bank the net sum paid by said bank for insurance insuring the 15.75 acre tract, the net sum is the gross amount paid by said bank less the return premiums to which said bank is entitled when the insurance is cancelled after the sale; to Varnado Plumbing Contractors, Inc., \$462.77 for labor and material repairing broken pipes due to January 1982 freeze; to A. N. R. Electric, \$45.00 for tying off wires and checking system; to Dixie Electric, \$120.00, deposit and service charge; to Sears, Roebuck & Co., \$49.77 service charge and repairs to two frozen water pumps, all pertaining to the 15.75 acre tract;

IT IS FURTHER ORDERED that after the payments ordered herein, the balance of the sales price is to be given to the trustee and by him deposited in the Fidelity National Bank of Baton Rouge, in an interest bearing account of certificate of deposit, until further order of this Court;

IT IS FURTHER ORDERED, ADJUDGED AND

DECREED that any and all rights of whatever nature or kind that the Fidelity National Bank has resulting from the collateral mortgage dated March 16, 1980 and any collateral mortgage note, pledge agreement and all other rights of Fidelity National Bank are transferred to the proceeds of this sale including all interest earned thereon;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this sale is made and all sums received by the trustee of this estate are so received with full reservation of all rights of Charles N. Malone, trustee of this estate, Erwin A. LaRose, trustee of King Lumber Industries, Inc., and Fidelity National Bank of Baton Rouge; any rights whether they have been asserted at this time or not in, to or in any way affecting the 15.75 acre tract are hereby reserved and transferred to the proceeds of this sale and any interest earned thereon;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Clerk and the Recorder of Mortgages for the Parish of Livingston is hereby ordered to cancel and erase the inscription of the collateral mortgage by King Lumber Industries, Inc. in a document entitled "Collateral Mortgage" dated March 6, 1980 securing a collateral mortgage note in the amount of \$450,000 recorded in Mortgage Book 175, Page or Folio 300 of the records of the Clerk and recorder of the Parish of Livingston,

Baton Rouge, Louisiana, this 14th day of May, 1982.

/s/ A. LEON HEBERT

A. LEON HEBERT,  
BANKRUPTCY JUDGE

cc: Mr. Charles N. Malone, Trustee  
Mr. David S. Rubin, Attorney for  
Fidelity National Bank of Baton Rouge

Mr. Erwin A. La Rose, Trustee of  
King Lumber Industries, Inc.  
Mr. Micheal T. Perry, attorney for  
Erwin A. La Rose, Trustee  
Mr. Franz Joseph Baddock, Attorney for  
the Debtors

CLERK'S OFFICE

A TRUE COPY

MAY 14 1982

s. Dora A. Erlurt

Clerk, U.S. Bankruptcy Court

Middle District of Louisiana

Baton Rouge, La.

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF LOUISIANA

IN RE:

G. HAROLD KING, JR. AND  
SHIRLEY G. KING  
DEBTORS

CASE

NUMBER 81-00329

*APPLICATION FOR PRIVATE SALE OF  
IMMOVABLE PROPERTY*

TO THE HONORABLE A. LEON HEBERT,  
BANKRUPTCY JUDGE:

The application of Charles N. Malone, the duly appointed and qualified trustee herein, with respect represents that:

1.

The above captioned case was filed under the provisions of § 303 of the Bankruptcy Code seeking relief under Chapter 7 of the Bankruptcy Code on July 24, 1981. An order for relief under Chapter 7 of the Bankruptcy Code was entered on November 12, 1981.

2.

In due course, applicant was appointed Chapter 7 trustee and has now qualified and is acting as such.

3.

The estate for which applicant is trustee owns the described immovable property:

One certain tract or parcel of ground, together with all buildings and improvements thereon, containing approximately 15.75 acres, situated in the Parish of Livingston, State of Louisiana, in Sections Twenty (20), Twenty-One (21) and Thirty-Nine (39), Township 7 South, Range 3 East, and designated on a map made by Dorian P. Heroman, C.E., dated October 14, 1974, a

copy of which is annexed to an Act of record in Book 194, Folio 327 of the conveyance records of Livingston Parish, State of Louisiana.

4.

Applicant has received an offer to purchase said immovable property from Thomas L. Sullivan, Jr., 1295 Florida Boulevard, Denham Springs, Louisiana for the sum of \$356,383.00, cash to be paid at the act of sale. A copy of the purchase agreement offering to purchase said property is attached hereto and made a part hereof.

5.

The trustee will sell said property to this purchaser or to any other purchaser who may offer a substantially higher price therefore under the same terms and conditions. The sale will be without warranty on the part of the trustee.

6.

Said immovable property has been listed with Jay Crowe & Associates Realtors which real estate company has produced this prospective purchaser. Applicant proposes to pay a commission to said real estate company in the amount of 6% of the purchase price. This sum will be paid to that real estate agency at the act of sale.

7.

The purchaser is himself a real estate broker and will receive, from the listing agent, a portion, thought to be one-half of the commission paid.

8.

The Fidelity National Bank of Baton Rouge Claims to have a security interest affecting the immovable property sought to be sold herein. The validity of Fidelity National Bank's claimed security interest is disputed by applicant and the validity of said security interest is before this Court for a determination thereof. If the Fidelity National Bank's alleged security interest is valid against your applicant, then there may be no equity in said property for the estate.

9.

During the pendency of the determination of the

validity of Fidelity National Bank's security interest, the proceeds of this sale will be held, by the trustee, in an interest bearing account. Any security interest that Fidelity National Bank may have in said immovable property will be transferred to the proceeds of this sale.

10.

If Fidelity National Bank's alleged security interest is determined by this Court to be valid against the trustee, then the estate will retain reasonable administrative expenses for the estate, from the proceeds of the sale.

11.

There is a first mortgage affecting the property sought to be sold herein in favor of Citizens Savings & Loan Association of Baton Rouge having an unpaid principal balance in the amount of \$116,518.01, plus interest in the amount of \$8,683.52 from June 1, 1981 through April 14, 1982 plus interest from April 15, 1982 until paid at \$27.51 per day plus late charges in the amount of \$221.43 through May 19, 1982 plus reasonable attorneys fees as allowed by § 506 (b) of the Bankruptcy Code.

12.

After payment of the real estate commission and deduction or payment for the debt owed to Citizens Savings & Loans Association there should be no less than \$197,000.00 derived from the sale.

13.

Applicant feels that the sale of said immovable property under the foregoing terms and conditions is in the best interest of this estate and that the price offered therefore is the best one available.

WHEREFORE, applicant prays for the annexed order and for all relief as is equitable and just.

Respectfully submitted,  
/s/ Charles N. Malone

Date: April 15, 1982 Charles N. Malone, Trustee  
P.O. Box 3233  
Baton Rouge, LA 70821

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF LOUISIANA**

**IN RE:**

**G. HAROLD KING, JUNIOR,     CASE NO. 81-00329  
AND SHIRLEY G. KING,  
DEBTORS**

**TRANSCRIPT OF THE ABOVE ENTITLED AND  
NUMBERED HEARING ON OBJECTION OF  
DEBTORS TO TRUSTEE'S PROPOSED SALE OF  
IMMOVABLE PROPERTY AND ON OPPOSITION  
OF TRUSTEE OF KING LUMBER INDUSTRIES,  
INC., TO SALE. THIS HEARING WAS HELD  
BEFORE THE HONORABLE A. LEON HEBERT,  
UNITED STATES BANKRUPTCY JUDGE FOR THE  
MIDDLE DISTRICT OF LOUISIANA ON MAY 13,  
1982, AT 10:00 A.M.**

**REPORTED BY:  
BARBARA D. PHIPPS  
VERBATIM STENOGRAPH REPORTER**



## CERTIFICATE OF SERVICE

I certify that although Fidelity National Bank is listed as a party defendant/appellee in the caption of this matter before the United States Court of Appeals for the Fifth Circuit, that said bank has assumed the position that "the sole proper appellee is the Trustee, who controls the estate of the Debtors. 11 USC 323..." and that for this reason the sole appellee herein is CHARLES N. MALONE, Trustee.

Accordingly, I certify under Rule 28.5, that I have this date, by prepaid mail, forwarded three (3) copies of the foregoing Appendix to Mr. CHARLES N. MALONE, Trustee, P.O. Box 3233, Baton Rouge, Louisiana 70821., and that all parties required to be served have been served under said Rule 28.5

Nevertheless, to apprise all entities that may have interest in this matter, I further certify that I have served an information copy of the same Appendix by pre-paid mail, on Mr. DAVID S. RUBIN, Attorney, P.O. Box 2997, Baton Rouge, Louisiana 70821, Mr. MICHEAL T. PERRY, Attorney, 5420 Corporate Blvd., Suite 302, Baton Rouge, Louisiana 70808, and on the CITIZENS SAVINGS AND LOAN ASSOCIATION, P.O. Box 1988, Baton Rouge, Louisiana 70821 - ATTN: Mr. MICHAEL A. ROY, Senior Vice President.

JAN 27 1984  
BATON ROUGE, Louisiana, this January 27, 1984.

/s/ Franz Joseph Baddock

FRANZ JOSEPH BADDOCK